



JEW

Attorney Docket: SIERRA #7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application)
)
Stephen L. Palmer)
William R. Palmer) Art Unit: 1761
)
Serial No. 09/974,633) Examiner: S. Weinstein
)
Filed: October 9, 2001)
)
For: FOOD DECORATING APPARATUS) SECOND DECLARATION UNDER 37
AND METHOD) CFR 1.132
) By STEPHEN L. PALMER

MAIL STOP RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

I, STEPHEN L. PALMER, declare that:

I am a co-inventor of the FOOD DECORATING APPARATUS AND METHOD disclosed and claimed in the above-identified pending U.S. Patent Application and have performed marking tests using the marking pens of the subject invention and pens of the prior art. Pens were tested on a variety of food substrates to determine efficacy of marking ability. The pens of the subject invention were compared to the commercially available "Foodoodler" pen (patent No. 6,299,374), as well as a Crayola brand Brush Tips marking pen. Substrates utilized for these tests are listed below:

CERTIFICATE OF MAILING

1
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on October 28, 2004

By *China Okunade Veliz*
Signature

Ready to spread Vanilla frosting, Pillsbury brand UPC 1800016080
Ready to eat Tapioca pudding, Hunt's brand UPC 2700041178
Hard, Dry Oatmeal cookie, Sunnyside brand UPC 1754413120

The test procedure was as follows:

The Ready to Spread Vanilla frosting was spread onto a Hard, dry oatmeal cookie (Sunnyside brand) to a thickness of about 3/16", covering most of the top surface.

Each of the pens in the test were successively used in an attempt to mark on the freshly spread frosting substrate. A second test was performed using an unfrosted cookie as a marking substrate. A third test was performed using tapioca pudding as a marking substrate. Results from these tests are recorded in the attached table identified as Attachment A.

While the marking ability of the Brush Tips product and the Foodoodler product performed slightly better than the device of the subject invention on the surface of the unfrosted cookie, the device of the subject invention significantly outperformed both the Brush Tips and Foodoodlers products when applied to fresh frosting or tapioca pudding, particularly in its ability to transfer marking fluid to these soft substrates, while minimizing damage to the substrates under test and avoiding buildup of substrate material on the device nib.

I hereby declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above-identified application or any patent issued thereon.

Date: OCT. 26, 2004

A handwritten signature in dark ink, appearing to read "SL Palmer", is written over a horizontal line.

STEPHEN L. PALMER



ATTACHMENT A

Comparison of ability of various writing instruments to write on food surfaces

The ability of each writing instrument to write on various food substrates is recorded. A scale of 1 to 5 is used with 1 being least functional and 5 being most functional.

Ability to transfer fluid to substrate

- 1 = Little to no transfer
- 2 = Some transfer
- 3 = Moderate transfer
- 4 = Good transfer
- 5 = Excellent transfer

Deformation or gouging of substrate

- 1 = Extreme gouging
- 2 = Significant gouging
- 3 = Moderate gouging
- 4 = Slight gouging
- 5 = Minimal to no gouging

Substrate buildup on nib

- 1 = Extreme buildup
- 2 = Significant buildup
- 3 = Moderate buildup
- 4 = Slight buildup
- 5 = Minimal or no buildup

Substrate	Writing Tool (Manufacturer)		
	Brush Tips (Crayola)	FooDoodler (Private Label Products)	EasyWriter (Signature Brands)
<i>Ready to spread Vanilla frosting, Pillsbury brand UPC 18000 16080</i>			
Ability to transfer fluid to substrate	2	3	5
Deformation or gouging of substrate	2	1	5
Substrate buildup on nib	2	1	4
<i>Ready to eat vanilla pudding, Hunt's brand UPC 27000 41178</i>			
Ability to transfer fluid to substrate	2	2	3
Deformation or gouging of substrate	2	1	4
Substrate buildup on nib	2	1	4
<i>Hard, Dry Oatmeal cookie, Sunnyside brand UPC 17544 13120</i>			
Ability to transfer fluid to substrate	3	3	2
Deformation or gouging of substrate	5	5	5
Substrate buildup on nib	5	5	5